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Letter dated 29 February 2000 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the Secretary-General

Please find enclosed the text of the "Position of the Croat Leadership regarding the process of deconstituization of Croats in Bosnia and Herzegovina" (see annex). The document addresses the changing sentiment of the Bosnia and Herzegovina Croats concerning the status of implementation of the Dayton-Paris Peace Agreement and also recommends ways to upgrade the Accords for the benefit of all three communities and the country as a whole.

Upon the instruction of the Office of the Croat Member of the Presidency of Bosnia and Herzegovina, may I ask for your kind assistance in circulating the text of the present letter and its annex as a document of the General Assembly, under agenda item 42, and of the Security Council.

The letter has also been presented to the High Representative and to the diplomatic community in Bosnia and Herzegovina.

(Signed) Muhamed SACIRBEY
Ambassador and Permanent Representative

ANNEX

Position of the Croat Leadership regarding the process of deconstituization of Croats in Bosnia and Herzegovina

In order to secure self-sustaining peace in and the development of Bosnia and Herzegovina, and in order for the peoples and citizens of Bosnia and Herzegovina to become active participants in changes and the possible acceleration of the peace process, and in order for Bosnia and Herzegovina to draw closer to Euro-Atlantic integration while promoting a true - rather than a chimerical - multi-ethnic status, which can best be measured by the position of the smallest constituent community in Bosnia and Herzegovina, the political leadership of the Croat community in Bosnia and Herzegovina finds it necessary to proceed from the following assessment of the situation and these recommendations:

1. The Bosnia and Herzegovina Croat leadership seeks to integrate the Croat community, as constituent and equal, into a democratic, decentralized and multinational Bosnia and Herzegovina. This can be accomplished successfully only if the Croat community becomes an equal partner with real influence on the process of integration. Integration must not be a process in which a nation disappears, but precisely an opposite process, in which every nation, thanks to its centuries-old cultural, religious, linguistic and other characteristics, can find its rightful place in an integrated Bosnia and Herzegovina, in a united Europe.

2. The constitutivity of all three nations on the whole territory of Bosnia and Herzegovina, coupled with a relevant constitutional-legal and territorial framework, by which the standardization of the rights of all three peoples is secured, while maintaining parity and consensus at the State level, can, in the long term, assure a self-sustaining and prosperous Bosnia and Herzegovina. In this context, the political leadership of the Croat community in Bosnia and Herzegovina is committed to do all it can to secure a constitutional-legal position for the Croats, as a precondition for their survival and unhindered development, in an atmosphere of coexistence and tolerance with the other two peoples and other citizens in a truly multi-ethnic Bosnia and Herzegovina.

3. Croats, along with Bosniaks and Serbs, are constituent peoples of Bosnia and Herzegovina.[a] The Constitution recognizes this equality. The Dayton-Paris Peace Agreement, however, began a process of unequal or unstandardized treatment of the three constituent units in the country. It gave the Serb community the greatest powers and rights through the Republika Srpska entity, and de facto the same rights to the Bosniak community through the Federation entity.[b]

4. Since the signing of the Peace Agreement, the international community has advocated improvements in these constitutional arrangements. But instead of upgrading the rights and powers of the Croat community and making it a more equal partner of the Serbs and Bosniaks in the building of a common State, the international community has regrettably taken steps to limit them and, in effect, deconstituted the Croats. Instead of giving Croats a stake in Bosnia

and Herzegovina and motivating them to use all of their energies to build the State, the international community through these actions is further alienating them. Not surprisingly Croat support for the Federation and a unified State has declined dramatically.[c]

5. This process of deconstituization began when the mechanism of special relations with neighbouring States, which was an integral element of the Peace Agreement that was intended primarily to bolster the viability of the smallest community, was downgraded and effectively eliminated.[d] This process was intensified by attempts to limit the powers of cantons in areas such as education, language, media, policing and the use of symbols. The process has continued to the detriment of the Croats after they were denied the right to establish a nationwide television channel in their own language. The television policy is being reconsidered thanks to the intervention of the High Representative, and the final decision must result in standardizing this right for all three communities.

6. This clear trend towards deconstituization exposes efforts to unitarize and centralize the Federation, especially in the areas of judicial and internal affairs. Outvoting of the Croat members of the Federation Government and its deputies in the House of Representatives of the Federation Parliament has become a commonplace practice; and here we refer to outvoting on questions of vital national interest.[e] This practice must urgently cease. One possible solution would involve the rotation of the premier and vice-premier as well as granting the right of vote to vice-ministers. Further revocation of cantonal rights and their transfer to the Federation is not acceptable; moreover, this is contrary to modern democratic practice.

7. On the State level, another negative process that is supported by the Bosniak leadership is developing, with the ultimate goal of eliminating the principle of consensus and parity in the common institutions of Bosnia and Herzegovina. This would result in a State which is dominated by one nation: a one-party State. This refers in particular to the Council of Ministers, or the decision by the Constitutional Court regarding the harmonization of the Law on the Council of Ministers with the Constitution of Bosnia and Herzegovina, and thereby the possible reform of the Council of Ministers. Neither the legal harmonization nor the possible restructuring of the Council should be allowed to bring into question the parity and consensus in the structure and decision-making mechanism of the Council. We take a strong view that a precondition for the survival of Bosnia and Herzegovina lies in maintaining consensus and parity within common institutions.

8. Nonetheless, the constituent right of the Croats to elect their own officials, or to be represented by persons of their own choosing, is still the major issue to be addressed. The present draft election law continues this process of deconstituization by bringing into question the only two remaining institutions that the Croat community has in Bosnia and Herzegovina. The preferential voting system for the election of the Croat member of the Presidency will make it even more attractive for Bosniaks to vote the Croatian ballot, and thus to deconstitute the Croats.[f] Similarly, the present draft would give the Bosniaks the power to designate the majority of the Croat seats in the constituent chamber of the entity and State Houses of Peoples. This allows only

the Bosniaks and Serbs to have this institution of legislative veto power, with the Croats thus being singularly deconstituted in the legislative process. Therefore, the Croats may be deconstituted in all three areas envisioned to exercise, check and balance power in the State's executive, legislative and judicial branches.

9. The present draft is also counterproductive in several other ways. It seeks to elect Croat representatives who have marginal or no support at all, or those that will have no influence on or contact with the Croat community. This arrangement benefits no one. Furthermore, the present draft would unintentionally establish the Federation as a one-party, or de facto a uninational entity. In a country where the electorate votes almost exclusively along ethnic lines, the international community is advocating an election law which will establish the Federation as a one-party, Bosniak entity.[g]

10. The democratically elected Croat leadership is responsible to an electorate for protecting its constitutional rights and for securing institutions which will make the Croat community an equal partner in Bosnia and Herzegovina, in accordance with the mechanisms and precedents in the Dayton-Paris Peace Agreement. In our view, the draft election law for the Serb community, through the Republika Srpska entity, strikes an appropriate balance between the dual goals of the Peace Agreement: (a) to respect national/constituent rights and (b) to build a civil society.[h] The electorate for Serb institutions consists of 80 per cent Serbs and 20 per cent non-Serbs. The Croat leadership is willing to accept the draft election law if the electorate for the Croat community is constituted in a similar way. This balanced solution would also pluralize the Bosniak community, which has no non-Bosniak influence on its politics. To the contrary, this community is so large that it can shift its voters to elect Croat representatives as need be.

11. The Croatian leadership in Bosnia and Herzegovina continues to believe that the international community should assist it in finding ways to enfranchise the Croatian community into Bosnia and Herzegovina.[i] The international community should find ways to harmonize the Dayton-Paris Peace Agreement in terms of standardizing institutions for all three communities so that the Croats can also develop a stake in Bosnia and Herzegovina as the other two communities already have.

12. Today, 70 per cent of all decisions in Europe are made at the regional level and the decision-making process regarding its development grows ever closer to the people whose interests are directly affected by these decisions. While these regions form around various principles, they respect each region's cultural, linguistic, historical and economic characteristics. The principle of subsidiarity allows for each region to engage in activities and to exercise their authority towards both the State and wider regional associations. The development of Europe points in the direction of further regionalization under these principles. Bosnia and Herzegovina as a multinational State should adopt this positive experience of European regionalism. The Croat community therefore calls for the adoption of these principles, which can integrate it into both Bosnia and Herzegovina and Europe.

13. If this obvious and negative process of deconstituization of the smallest community is not urgently reversed on the basis of these solutions, the Croat leadership and the Croat people in Bosnia and Herzegovina reserve their legitimate right to unilaterally decide what modalities to pursue in order to protect their rights as a sovereign and constituent people as granted to them by the Constitution of Bosnia and Herzegovina.

21 January 2000.

Notes

[a] The term "constituent" or "constitutive", or sometimes "sovereign", is understood to refer to rights and powers of a people to establish their own institutions, to elect and designate their own representatives, to enact and change laws and the Constitution, to levy taxes, and assert self-determination.

[b] See non-paper of 18 March 1999, p. 7, para. 1. The Republika Srpska received enormous power mechanisms in the Dayton-Paris Peace Agreement in terms of institutions, territory, army, media, symbols and other rights. Given that the entities are constituted on civil society principles, and given that the Bosniaks have a 3:1 numerical superiority in the Bosniak-Croat entity, and the voting practices are along ethnic lines, the Federation has become a de facto Bosniak entity.

[c] See non-paper of 13 March 1999, exhibits 1 and 2, on pp. 10-11. Only one third of Croats now support the Federation and a unified State; down from two thirds in 1996. See also the latest survey of public opinion in Bosnia and Herzegovina (United States, Department of State, Office of Research, 22 November 1999). Conversely, the support for a unified State in the Serb community is steadily increasing, from 5 per cent to almost 30 per cent. The Serb community supports the State more and more as it recognizes its stake in Bosnia and Herzegovina through the institutions it has.

[d] See non-paper of 18 March 1999, p. 8, para. 8. The Croat leadership insists on wide formalization of the special relations between the Federation and Croatia. However, it is willing to re-examine this mechanism if the Peace Agreement is harmonized in a positive direction. We should recall that the Washington accords, by which the Federation was established, envisioned a confederal relationship between the Federation and Croatia - a substantially stronger relationship than now envisioned by special relations. Even these softer relations are proving difficult to implement and are being ever more downgraded.

[e] Inconsistency in the make-up of the Federation Government is reinforced by certain decisions of the international community. For example, the principle of consensus is instituted in mixed cantons and the principle of protecting the vital national interest is being instituted in certain municipalities with strong majorities, while these principles are denied at the level of the Federation Government.

[f] More than one third of voters casting a Croat Presidency ballot in the last election were non-Croats, mostly Bosniaks. The number of non-Bosniaks casting a Bosniak ballot appears to have been negligible, and reflects an unacceptable imbalance in the Federation of Bosnia and Herzegovina.

[g] See last elections results in the Federation of Bosnia and Herzegovina House of Representatives: SDA-led coalition received 49 per cent of the votes/seats. Given the unique voting pattern, this effectively assures the Bosniaks permanent governance of the Federation of Bosnia and Herzegovina, and the SDA the primacy in forming governments. Croat parties received a mere 22 per cent of the votes/seats.

[h] The pluralization of Republika Srpska in terms of party activity and the appearance of pro-Dayton progressive politicians developed only after the Serb community realized its national rights through the Republika Srpska entity and institutions. The same is true for the Bosniak community. The Croat community will also become pluralized once its constituent rights are assured, or a stake in Bosnia and Herzegovina becomes real. According to the findings of the United States Information Agency, the question of national rights is the most important - or the second most important - issue for all three communities in Bosnia and Herzegovina, along with economic development.

[i] In this way the net outflow of Croats from Bosnia and Herzegovina since the signing of the Peace Agreement would be reversed; it would motivate their return. Croats merit this because their majority areas have taken back the largest number of minority returnees. Since the signing of the Dayton-Paris Peace Agreement to 30 November 1999, 38 per cent of pre-war non-Croats have returned to the Croat-majority areas, while this ratio stands at 10 per cent for the Bosniak-majority areas, and 4 per cent for the Serb-majority areas. The Republika Srpska now houses only about 5 per cent of its 1991 non-Serb population. Twenty per cent of the 1991 Croats no longer live in the Federation of Bosnia and Herzegovina (central Bosnia), while the number of Bosniaks in the Federation of Bosnia and Herzegovina has increased by 350,000 since 1991. For these reasons the implementation of Annex 7 and the return of Croats are critical.